IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 666 of 2001

in

SPECIAL CIVIL APPLICATION No 1287 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 & 2 YES; 3 to 5 NO

B R SHUKLA

Versus

O N C G

Appearance:

1. LETTERS PATENT APPEAL No. 666 of 2001

MR AK CLERK for Appellant No. 1

MR RAJNI H MEHTA for Respondents No. 1-3

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 22/03/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This Letters Patent Appeal is preferred from the judgment of the learned single Judge, by which, in all 10 writ petitions preferred by 21 employees of the respondent were disposed rejecting their claim for all the benefits as if they were entitled to, and had exercised the option for, being absorbed in the finance and accounts wing of the respondent with retrospective effect. All those original petitioners had, by the time the impugned judgment was rendered, either retired or resigned or died before or after filing of the respective petitions. All the petitioners had initially joined the respondent (hereinafter referred to as `the ONGC') as junior assistants and based their claim on the case of one Shri R.A.Parmar who, after having been transferred to another wing of the ONGC, namely, accounts and finance wing, had obtained higher benefits and quicker promotions. In that context, it would be necessary to relate the relevant facts of that case.

2. After the year 1962, in view of the increasing activities relating to finance and accounts, a separate wing, called, finance and accounts wing, was constituted by the ONGC and separate criteria of eligibility for appointment, as per the requirement, to the post of junior and senior accounts assistants were prescribed. Out of the general category of junior and senior assistants, one Shri R.A.Parmar was transferred from the establishment section to accounts section along with the works of PCS Section (personal claims section) in January, 1968. Said Shri Parmar immediately made an application to permanently absorb him as accounts assistant and gave his option to be absorbed in the accounts section. He also demanded that his seniority be determined from the date of joining the Commission (in 1962) which demand was not acceded. The dispute on that count was referred to the Industrial Tribunal which held that Shri Parmar was entitled to exercise his option to be absorbed in the accounts section and his seniority was ordered to be fixed on the basis of his entire service. Incidentally, the Tribunal found that under the office order dated 5.7.1962 only those junior/senior assistants who were actually working in the finance and accounts discipline were offered the option, which action was arbitrary and that all such assistants ought to have been given an option either to remain in the main-stream or to

opt for finance and accounts discipline. The challenge to the aforesaid award in Special Civil Application No.2715 of 1987 failed. While dismissing that petition, the Division Bench of this Court directed that if the regulations of the ONGC provided for any discretionary exemption, such benefit of exemption must be given to Shri Parmar for exempting him from appearing at any examination or test for promotion. Being aggrieved, the ONGC preferred an appeal before the Supreme Court which resented the direction in respect of grant of exemption and, instead, issued the direction to `consider' the case of Shri Parmar for granting exemption from appearing at any examination or test for promotion in accordance with law. At that stage of the proceedings, the ONGC urged and the counsel appearing for Shri Parmar conceded that the order of the High Court may be treated as one made in favour of Shri Parmar only. Thus, the order of the High Court and its effect stood finally modified and restricted to the case of Shri Parmar only.

2.1 Even as the legal battle of Shri Parmar was carried on as above, a few similar employees had directly approached the High Court by way of Special Civil Application No.1544 of 1972 for similar reliefs. In the course of its hearing, a statement was made on behalf of the ONGC on 22.2.1973 that the case of the petitioners and like persons would be considered afresh after final decision in the industrial disputes pending as Reference (IT) No.186 of 1970 and, if the petitioners and the like persons fell squarely within the ratio of the decision, they would be given like benefits. In view of such statement, the petitioners had withdrawn the petition.

2.2 With the above background of two other litigations and the orders and statements made therein, the appellant-workman claimed that he was similarly situated and was entitled to be considered for absorption in accounts and finance wing as also for further promotions just as Shri Parmar. The grievance of the appellant was that by a fortuitous circumstance he was posted on the administrative work and neither his work nor himself was transferred to the accounts wing, whereby, he was deprived of the option to join the finance and accounts wing in which chances of promotions were better and faster. The claim of the appellant was resisted mainly on the ground of laches and the contention that his case did not fall squarely within the ratio of the decision in the case of Shri Parmar.

3. The important facts that emerged from the record were that Shri R.A.Parmar had not been posted in the

finance and accounts wing on exercising an option but he was transferred to that wing along with the work in the year 1968. Thereafter, he had exercised the option for being absorbed in that wing and requested to fix his seniority with effect from the date of joining the Commission on 19.1.1962. As against that, the appellant had never been offered an option to opt for the finance and accounts wing, nor had he claimed or demanded absorption in the accounts wing; nor had the appellant been ever transferred to the accounts wing nor had he passed the requisite departmental examination/test to be eligible for further promotion in the finance and accounts wing. On these distinguishing features, it was found by the learned single Judge that the case of Shri Parmar stood on a different footing insofar as he had actually been transferred and absorbed in the finance and accounts wing and had raised his dispute only in respect of determination of his seniority. Whereas the appellant had never sought or demanded an option to be transferred and absorbed in the accounts wing, but probably realizing that Shri Parmar had succeeded in getting seniority as well as promotions as consequential benefits, he had joined the chorus directly demanding the same benefits after his service under the ONGC had ended. Out of the group of petitioners before the learned single Judge, the claim had been lodged by three of the writ petitioners in the year 1972 and one of them had lodged his claim in the year 1978 while the rest had not agitated any claim until Shri Parmar had succeeded and obtained the consequential benefits. Thus, in short, the case of the appellant was found by the learned single Judge to be dissimilar and grossly belated.

4. It cannot be gainsaid that the statement made on behalf of the ONGC on 22.3.1973 expressing an intention to grant the same benefits as may be given to Shri Parmar if the cases of the petitioners and the like persons squarely fell within the ratio of the decision in Shri Parmar's case could not have been applied till the culmination of that litigation into the Hon'ble Supreme Court's order dated 3.10.1988. That order expressly relieved the ONGC of the obligation of treating the similarly situated employees in the like manner. Their Lordships of the Supreme Court also modified the direction regarding grant of exemption from appearing at the examination or test for promotion even in case of Shri Parmar. Therefore, if the appellant was claiming to be similarly situated and deprived of the benefits at par with Shri Parmar, he could have and ought to have approached the Court immediately or within a reasonable time. But he seems to have waited till the year 1993

when he was no longer in service of the ONGC and had completed 30 years of service and earned four promotions in the wing in which he had served. Secondly, after modification of the direction by the Hon'ble Supreme Court in respect of granting exemption from appearance at the examination or test for promotion, the appellant could not have claimed promotion as a matter of course or right. Thus, the claim of the appellant in reality stands reduced to a claim for option to be absorbed in the accounts wing and seniority on that basis which is obviously stale and jejune without even a demand therefor during the whole of his service period.

5. Mr.Clerk, learned advocate for the appellant, vehemently argued that it was unfair and highly improper on the part of the ONGC to renege on the solemn statement made before this Court in Special Civil Application No.1544 of 1972 and the concession given by the learned advocate of Shri Parmar before the Supreme Court was not binding upon the appellant as he was not a party in the case before the Hon'ble Supreme Court. However, as seen earlier, even assuming the statement of the ONGC to have continued to be binding, it could not have cured the appellant's petition of delay and laches and, in any case, it was never obligatory upon the ONGC to exempt the appellant from passing the necessary examinations for quicker promotions in the accounts wing as claimed by him. Therefore, we are unable to accept the aforesaid submission of the appellant for granting any relief.

6. In these facts and for the reasons discussed hereinabove, we do not find any substance in the appeal and hence, we reject it. Notice is discharged with no order as to costs.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)